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Book Note

LAW AS ENGINEERING: THINKING ABOUT WHAT LAWYERS DO, by David Howarth[1]

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WOULD IT BE ACCURATE, OR CONSTRUCTIVE, to describe what lawyers do as engineering? David Howarth's response is a fervent "yes" in *Law as Engineering*. The author sketches the ethical implications for legal professionals of thinking and acting like professional engineers. Howarth argues that, whereas engineers take seriously the societal consequences of their work, lawyers incompletely theorize the potential consequences of their "devices" (*e.g.*, contracts, wills, corporations) and that this tendency needs to change. The shortsighted lawyers should adopt the engineers' broad-minded professional touch.

Howarth weaves together seminal issues and case studies in both legal and engineering ethics to arrive at preliminary best practices for lawyers wishing to avoid contributing to such large-scale disasters as the collapse of the world's financial markets (*e.g.*, the Great Crash of 2008). The book's six chapters are introduced in chapter one, which includes a thorough literature review of relevant scholarship.[2] The definition of what lawyers do is fleshed out in chapter two, where the author focuses on transactional work. Although the book concerns only two professional contexts—England and the United States—it could easily be of interest to lawyers working in other Commonwealth jurisdictions.

Howarth introduces chapter three (Law as Engineering) by defining what engineers do and how they go about doing it. Unlike lawyers, engineers describe their design processes in terms of systems; this enables them to specify and to test design outcomes at various system levels. With this definition in mind, the author introduces the concept of law-as-engineering, observing that, like

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1. (Cheltenham, UK: Edward Elgar, 2013) 237 pages.
2. See *e.g.* Roscoe Pound, *Social Control Through Law* (New Haven: Yale University Press, 1942), cited in *ibid* at 6, n 13.

engineers, "lawyers want to make something useful that works for their clients."[3] But, he acknowledges, "[t]he uncertainties involved for transactions lawyers in assessing risks at system levels beyond the law are considerable."[4] Chapters four and five take the law-as-engineering analogy further, exploring its ethical implications for transactional lawyers, litigators, judges, and legal academics.

In chapter four, Howarth walks the reader through lawyers' roles in the Great Crash using two case studies—the fall of Lehman Brothers and the controversial activities of Goldman Sachs. He is not convinced, for example, that the lawyers at the London office of Linklaters, an English law firm, who helped justify Lehman Brothers's infamous Repo 105 transactions should see themselves as one or more system-levels removed from an ethical responsibility to prevent such specious dealings. To be clear, Howarth does not allege that the lawyers engaged in fraudulent undertakings. Instead, he uses these examples as a basis for speculating on the limits of lawyers' professional obligations. He asks, for example, "Do lawyers have an obligation to preserve the stability of markets… ?"[5] And, although he never quite answers that or many questions like it, Howarth does make a case for minimizing specialization-based scapegoating (*e.g.*, blaming the accountants, not the lawyers). The kernel of Howarth's response is informed by two arguments from engineering ethics against technological neutrality, which he extrapolates to legal technology (*e.g.*, Repos).

Chapter five is where Howarth outlines the implications of law-as-engineering for legal research and teaching. In chapter six, the reader is asked, once more, to consider the issue that unifies chapters one through four—why lawyers should be described as engineers. Howarth reiterates that this description "is useful because it provides a sound starting point for appraising what lawyers do, through the application of engineering ethics to their activities, and for improving their performance, through searching for principles of effective design."[6] He dedicates the remainder of his concluding chapter to responding to four objections to this position.

The resulting ethical framework appears to be a unique blend of instrumentalism and consequentialism, although Howarth never describes it as such. Whether or not readers will agree with the author's theoretical product, they will surely admire his ability to tackle provocative and timely questions in a well-mannered tone. Written

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3. *Ibid* at 67.
4. *Ibid* at 82.
5. *Ibid* at 108.
6. *Ibid* at 189.

in accessible prose, *Law as Engineering* should appeal to a general audience of legal scholars, practitioners, and law students seeking a renewed engagement with foundational questions of legal practice.